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JUL 27 2004

OFFICIAL

In re application of Amit Goffer
Application No.: 09/864,845
Confirmation No.: 4088
Filing Date: May 24, 2001
Title: Gait Locomotor Device

Honorable Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Sir:

I hereby certify that the following papers are being facsimile transmitted to:

Jerome W. Donnelly at the United States Patent and Trademark Office,

on July 27, 2004 at (703) 872-9306

2 pages response to restriction requirement

☐ Fax cover sheet

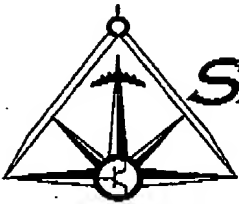
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Respectfully submitted,

Shalom Wortsberger, REG. 43,359

Docket: 0113US-Gofer



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In the United States Patent and Trademark Office

In re application of: Amit Goffer	
For: Gait Locomotor Device	
Serial No.-Confirm.: 09/864,845 ~ 4088	Group: 3764
Filed on: May 24, 2001	Examiner: Jerome W. Donnely
Correspondence Date: July 27, 2004	Docket: 0113US-Goffer

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Response to Restriction Requirement

JUL 27 2004

Honorable Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

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This communication is in response to a restriction requirement mailed to applicant June 30, 2004. The Office placed a restriction requirement between claims 1-57 as drawn to an apparatus under class 601/5 and claims 62-68 as drawn to a method of use under class 128/898. Applicant respectfully submits that the restriction requirement is improper.

However, in a telephone interview conducted on July 27, 2004, with the examiner, applicant agreed, under traverse, to elect claims 1-57 for examination. The reasoning for traversing the restriction is detailed below, to clearly place applicant's position on the record.

1. Applicant submits that the Office erred in classifying the method and apparatus claims into two separate statutory classes. The method claims 62-68 require essentially all the limitations of the independent apparatus claim. The method claim and the apparatus claim share very similar preamble, and a limitation in the body of the claim (rather than the preamble alone) points to the same field, operational mode and use, of the apparatus and the method requiring its use. It therefore stands to logic that the two aspects of the present invention fall into the same class. Applicant submits that failing a clear and convincing reason to the contrary, the method and apparatus claims should be classified in the same statutory class. In case of restriction of invention in the same class, two-way distinctness is required. The Office failed to show two-way distinctness, and thus meet this burden.
2. Applicant further submits that the Office did not show any serious burden to examine the apparatus and method claims together.

3. Applicant further submits that the two claim groups are clearly dependent, and the Office has illegally ignored the statutory requirements that two or more inventions must be both independent AND distinct (See 35 U.S.C. §121, 37 C.F.R. §1.141 and §1.142) before restriction may be imposed, and that the restriction is thus improper.
4. Applicant therefore traverses the restriction requirement, and respectfully requests that the Examiner will reconsider, withdraw the requirement, and examine the all the claims in the application.
5. Alternatively, applicant elects claims 1-57 for examination, and withdraws without prejudice, claims 62-68 from consideration at this time.
6. Applicant hereby requests that if the elected claims are found allowable, the withdrawn claims shall be rejoined with the application.

Respectfully submitted


Shalom Wertsberger

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